

REMARKS

Claims 1, 4, 12-14, 17-23, 25-28, 76-77 and 152-163 are currently pending.

I. Claim Objections:

Examiner has objected to claims 5-9 as being of improper independent form. Applicants have cured such defects by way of amendment. Specifically, claims 5-9 are now canceled.

Examiner has objected to claims 1, 4-9, 11-14, 26-28 and 152-163 as indefinite relative to that which encodes the subject polypeptide. Applicants have cured such defects by way of amendment. Specifically, claim 1 has been amended to make clear that the polynucleotide sequence, not another part of the nucleic acid, encodes a polypeptide that is an apoptosis inhibitor. Support for this amendment is found throughout the specification. Claims 4, 12-14, 26-28 and 152-163 should now be in proper form, as they are dependent on claim 1. The objection is moot to claims 5-9 and 11, as these claims have been canceled by way of the present amendment. Applicants submit that the objections to the claims have been overcome by the present amendments to the claims and respectfully request Examiner withdraw the noted objections.

II. Rejection under 35 USC §112:

Claim 11 is rejected under 35 USC §112, 1st paragraph for allegedly failing to comply with the written description requirement. Applicant submits this rejection is obviated by the present amendments to the claims.

Specifically, claim 11 is now canceled. Applicants respectfully request withdrawal of the rejection as applied to claim 11.

Claim 15 is rejected under 35 USC §112, 1st paragraph for allegedly failing to comply with the written description requirement. Applicants submit this rejection is obviated by the present amendments to the claims. Specifically, claim 15 is now canceled. Applicants respectfully request withdrawal of the rejection as applied to claim 15.


Claim 76 is rejected under 35 USC §112, 1st paragraph for allegedly failing to comply with the written description requirement. Applicants submit this rejection is obviated by the present amendments to the claims. Specifically, claim 76 is now amended to adequately reflect the appropriate genus of nucleic acid sequences. Applicants respectfully request withdrawal of the rejection as applied to claim 76.

Claims 76 and 162 are rejected under 35 USC §112, 1st paragraph for allegedly failing to comply with the enablement requirement. Applicants respectfully traverse this rejection, as the claims do not explicitly recite the polypeptide being produced in vivo. Further, Examiner mentions that, since dependent claims 77 and 163 indicate "that the polypeptide is produced in solution or in a cell in vitro", claims 76 and 162 can properly be considered to encompass in vivo production (see Paper mailed 12/12/2007, p.8). Applicants respectfully submit this statement is

erroneous, as claims 77 and 163 indicate the *nucleic acid expression*, rather than the polypeptide production, is performed in vitro. Moreover, Applicants point out that the claims are to be given their broadest reasonable interpretation consistent with the specification. Accordingly, it is not reasonable to interpret the specification to include in vivo methodologies. Therefore, it is not reasonable to be required to amend the claims to expressly disclaim in vivo production of the subject polypeptide. Applicants respectfully request withdrawal of the rejection as applied to claims 76 and 162.

This response is being timely filed. However, Applicants authorize the Office to deduct any fees, or credit any overpayments, to Deposit Account No. 502235. Examiner is invited to contact Applicants' representative directly at (858) 200-0586.

Respectfully submitted,



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